

# **TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Thomas J. Willi, Town Administrator / 797-1023

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** District 1

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING AND EXECUTING THE ASSIGNMENT OF LEASE, ASSUMPTION & CONSENT BETWEEN F.W. HOLDING 441, INC. AND THE TOWN OF DAVIE.

**REPORT IN BRIEF:** In February 2000 Eller Media entered into a lease agreement with the property owner of a portion of land within the YAF plat located along State Road 7 (441). In November 2002 Clear Channel Outdoor, Inc the successor and assignee of all rights of Eller Media entered into an Amendment to Lease with F.W. Holding 441, Inc., which owned the aforementioned parcel. In November 2002 the Town purchased the property for \$675,000 for future construction of a fire station and should have executed an Assignment of Lease, Assumption & Consent. This oversight was recently detected and this resolution will fully and properly execute this document.

**PREVIOUS ACTIONS:** N/A

**CONCURRENCES:** N/A

**FISCAL IMPACT:**

Has request been budgeted? N/A

**RECOMMENDATION(S):** Motion to approve resolution.

**Attachment(s):** Resolution.

Resolution \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING AND EXECUTING THE ASSIGNMENT OF LEASE, ASSUMPTION & CONSENT BETWEEN F.W. HOLDING 441, INC. AND THE TOWN OF DAVIE.

WHEREAS, the Town of Davie purchased a 1.1292 acre site located at Oakes Road and State Road 7 in November, 2002 for future construction of a fire station; and

WHEREAS, F.W. Holding 441, Inc. the previous property owner, entered into a lease agreement with Clear Channel Outdoor, Inc, f/k/a Eller Media in February 2000 for a billboard that exists on the property; and

WHEREAS, for and in consideration of the sum of one dollar and other good and valuable consideration paid by the Town, F.W. Holding 441, Inc. wishes to assign all of its right, title, interest, claims, rents due, or to become due in the aforementioned lease to the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. That the Assignment of Lease, Assumption & Consent attached hereto as Exhibit "A" shall be fully executed by the Mayor and Town Clerk

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2003

\_\_\_\_\_  
Mayor/Councilmember

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2003


MONROE D. KIAR  
TOWN ATTORNEY  
TOWN OF DAVIE  
6191 SW 45<sup>th</sup> Street, Suite 6151A  
Davie, Florida 33314  
(954) 584-9770

MEMORANDUM

DATE: September 11, 2003

TO: Russell Muniz, Town Clerk

CC: Mayor and Councilmembers  
Tom Willi, Town Administrator

FROM: Monroe D. Kiar, Town Attorney 

RE: Davie purchase from F.W. Holding 441, Inc.  
Control Number: 021100

Pursuant to your request, I have reviewed the documents that you transmitted to my attention as well as my file related to this matter. The Resolution and accompanying Agenda Report appear to be in proper form for transmittal to the Town Council for its approval.

### ASSIGNMENT OF LEASE, ASSUMPTION & CONSENT

FOR AND IN CONSIDERATION of the sum of One Dollar and other good and valuable consideration in hand paid by Assignee, Town of Davie, receipt of which is hereby acknowledged by the Assignor, F.W. Holding 441, Inc., Assignor does hereby and herein assign to Assignee all of its right, title and interest in a certain Lease dated February 22, 2000 between Assignor and Eller Media n/k/a Clear Channel Outdoor, Inc., a Florida corporation, the Tenant, and subject to covenants and conditions as stated in the Lease as amended November 7, 2002. Assignor also assigns to Assignee all claims or rents due or to become due the Landlord under the Lease and states that rent has been paid for the period through June 30, 2003.

Attached hereto is the Lease assigned as Exhibit "A" with Amendment dated November 7, 2002

Dated this 16<sup>th</sup> day of December 2002.

IN WITNESS WHEREOF, the parties have executed this instrument as of the day and year first above written.

#### ASSIGNOR

WITNESSES:

**F.W. HOLDING 441, INC.**, a Florida corporation

Sign Linda Hoag

Print LINDA HOAG

By :

Donald M. Marks  
Donald M. Marks, President

Sign Brian Abbott

Print Brian Abbott

**ASSUMPTION**

FOR AND IN CONSIDERATION of the foregoing Assignment, Town of Davie, as Assignee, does hereby assume the obligations as Landlord contained in and agrees to be bound by the terms and provisions of the Lease attached hereto as Exhibit "A".

Dated as of the 16<sup>th</sup> day of December 2002.

**BUYER/LANDLORD**

**TOWN OF DAVIE**, a municipal corporation of the  
State of Florida

ATTEST:

By: \_\_\_\_\_  
Harry Venis, Mayor

\_\_\_\_\_  
Russell Muniz, Town


**CONSENT TO ASSIGNMENT**

THE UNDERSIGNED, as Tenant of the premises described in the Lease attached hereto as Exhibit "A", does consent to the foregoing Assignment of Lease to Town of Davie

The undersigned acknowledges that the Lease is in good standing, that there are no breaches by the Landlord, that there are no modifications except that certain Amendment to the Lease dated November 7, 2002 and that the annual rent due under the Lease is \$13,500.00 and has been paid through June 30, 2003, the next payment of rent being due July 1, 2003.

Dated this 16<sup>th</sup> day of December 2002.

**Tenant:**  
**Clear Channel Outdoor, Inc.**

By:   
Jeff Andres  
Vice President of Real Estate  
Print name of officer signing

#12

**Eller Media  
Lease Agreement**

Lease#: 59423  
Leased by: Greg Hibbs

Dixie Southland Corporation ("Landlord") owns that certain property located in the City of Davie County of Broward, and more fully described as follows:

Address (Commonly): 3599 S. State Road 7, Davie, Florida

Ride Description: US Hwy 441 W 150F N SW 36<sup>th</sup> St. Davie

Legal Description: Sketch attached as Exhibit "A" a portion of Parcel "A" of "Y.A. F. Plat" 125-26

as recorded in the Public Records of Broward County, State of Florida, (the "Property"). In consideration of the agreements, covenants, promises, representations and warranties contained herein, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord hereby leases to Eller Media, a Delaware corporation ("Tenant"), and Tenant hereby leases from Landlord, the Property on the following terms and conditions (this "Lease"):

1. **Rent.** Tenant shall pay Landlord rent of \* Thirteen Thousand & Five hundred and XX/100 Dollars, (\$13,500.00) per year paid Annually in advance, plus Florida Sales Tax, with the first of such payments to be made July 1, 1999 (the "Rent Commencement Date") and thereafter annually on the anniversary of the Rent Commencement Date, each such payment to be Annually period during this period the Lease is in effect. Rent for any partial period shall be prorated on a daily basis.

\* \$13,500 annually for first 5 years; \$15,000.00 annually for second 5 years. The first years rent shall be prorated since the few months of rent had been paid, Landlord shall get one check for the months unpaid (January or February 2000) to June, 2000 within thirty days of lease execution date.

2. **Term.** The term of this Lease is for Ten (10) years from the "Rent Commencement Date", as herein defined, ending June 30<sup>th</sup>, 2009.
3. **Effective Date.** This Lease becomes effective on the date this Lease is fully signed by all parties (the "Effective Date"). However, rent commencement date shall be July 1, 1999.
4. **Purpose.** The purpose of this Lease is for Tenant to construct, and/or maintain and operate a sign structure (the "Structure") on the Property and to operate painted, printed, illuminated and/or electrical signs on the Structure, and all other uses not inconsistent therewith, including all necessary supporting structures, devices, illumination facilities and connections, service ladders, and other appurtenances. Tenant may also use the Structure to provide telecommunications infrastructure and revenue shall be shared 50/50.. Any such infrastructure is to be installed in or attached to the Structure.
5. **Tenant's Right to Enter and Use.** For the duration of this Lease, Tenant has the non-exclusive right to enter onto the Landlord property of which the Property is a part and to use the Structure for the purposes described in this Lease and any other purposes allowed or required by this Lease, and Tenant has the exclusive right to use the Property for advertising and the exclusive right to use the Structure to provide telecommunications infrastructure. Tenant shall maintain the Structure at Tenant's cost and expense. Tenant shall pay all utility charges in connection with the operation and maintenance of the Structure. Tenant shall keep structure in clean and good condition working condition, if Landlord notifies Tenant in writing stating the Tenant has not complied with this clause, the Tenant shall have 60 days to correct said defect, in the event, the Tenant does not correct this defect, then the Landlord may give the Tenant a thirty day (30) notice to cancel this lease agreement.
6. **Tenant's Hold Harmless.** Tenant shall hold Landlord harmless and defend from all damage to persons or property resulting from the negligent or intentional acts or omissions on the Property of Tenant's agents, employees or workers in the construction, maintenance, repair or removal of any Structure or any signs thereon. General Liability Insurance naming Dixie Southland as Additional insured with 30 days notice of cancellation and \$1,000,000.00 combined single limit shall be provided by Tenant.
7. **Obstruction.** Landlord shall take all steps necessary to ensure that Landlord, its agents, employees or any other persons acting on Landlord's behalf do not place or maintain any object on the Property or on any neighboring property within Landlord's control which would in any way substantially obscure, obstruct or in any other way substantially affect the view or use of the Structure or any sign thereon. If the view or use becomes substantially obscured, obstructed or otherwise affected, Tenant may, in its sole discretion, without affecting any other remedy Tenant may have, (i) request that the Landlord remove or remedy the obstruction or other condition causing the defect in the view or use, (ii) itself remove or remedy the obstruction or other condition and charge the cost of such removal or remedy to Landlord, or (iii) reduce the rental herein paid to the sum of Five Dollars (\$5.00) per year for the period during which the obstruction or other condition continues. Notwithstanding the foregoing, Tenant has the right to trim or remove any trees, bushes or other foliage in any way inhibiting the view or use of the Structure or any sign thereon.

LRASP hb 5/399

EXHIBIT NO. A

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Tenant acknowledges that a building, not in excess of 20 ft in height and is located west of the billboard will not cause an obstruction of the structure

8. Ownership/Removal. At all times, Tenant is and remains the owner of the Structure, and all signs and permits of any kind in relation thereto, and has the right to remove the Structure at any time. Any failure or delay in removing the Structure does not in any way constitute a waiver of Tenant's rights or an abandonment of the Structure, any signs or any permits by Tenant. At all times, Landlord shall allow Tenant reasonable access to the Property to effect any Tenant action allowed or required by this Lease or by applicable law. Following the removal of any Structure, Tenant shall make good faith efforts to return the Property to the condition it was in immediately prior to the removal of the Structure, fair wear and tear excepted. Tenant agrees to clean the area of any debris caused by removal of the Structure.
9. Condemnation. Tenant is entitled to recover from any condemning governmental authority payment for the loss of its leasehold interest, loss of its Structure or the use thereof, and for all other losses for which Tenant is otherwise entitled to recover under applicable law. If the condemning authority pays the condemnation award to Landlord, Landlord shall immediately thereafter pay Tenant the amount specified in the condemnation award for the Tenant's interest. In the event Tenant does not agree with the amount specified in the condemnation award, or the condemnation award does not specify the amount of Tenant's award, Tenant may, in its sole discretion, institute proceedings to acquire an award amount satisfactory to Tenant, from the condemning authority, and Landlord agrees to cooperate fully with Tenant in such event. In the event any right, title or interest of Landlord in the Property or any portion thereof is acquired by any governmental authority or quasi-governmental authority, in any way or manner or by any action whatsoever, and such entity attempts to terminate this Lease, then notwithstanding any such right, title or interest, such authority shall compensate Tenant in the same manner and to the same extent as if such authority had taken the Property or portion thereof by condemnation or threat of condemnation. Landlord and Tenant pursue remedies separately.
10. Hold Harmless. Landlord and Tenant shall defend and hold each other harmless from any liability arising out of the presence, manufacture, transportation, treatment, storage, handling, disposal, processing or use (collectively "Use") caused by the indemnifying party of any substances designated as, or containing components designated as hazardous, dangerous, toxic or harmful by any federal, state or local law, regulation or ordinance, (collectively, "Hazardous Substances") on the Property. Without limiting or affecting the survival of other provisions of this Lease, Landlord's and Tenant's obligations contained in this Section shall survive termination of this Lease. Tenant shall not bring hazardous substances onto the property in violation of this lease.
11. Standard Terms and Conditions. Those terms and conditions contained in the attached Addendum of Standard Terms and Conditions are hereby incorporated herein by this reference.

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IN WITNESS WHEREOF, the undersigned signed this Lease this 22<sup>nd</sup> day of FEBRUARY, 2000

*Barbara L. Lescage*  
 WITNESS: *Barbara L. Lescage*  
*David C. Krometz*  
 WITNESS: DAVID C. KROMETZ

LANDLORD: Dixie Southland Corporation

*Raymond Parker, Jr.*  
 Raymond Parker, President

Address: 810 NE 20<sup>th</sup> Avenue  
 City, ST, Zip: Fort Lauderdale, Florida 33304  
 Telephone: (954) 768-0274  
 Fax#: (954) 768-0276  
 SS# or Tax Id: 65-6110401

TENANT:

Eller Media  
 a Delaware corporation

*John Jacobs* 7/14/00 *[Signature]*  
 John Jacobs  
 President

Eller Media  
 5800 NW 77<sup>th</sup> COURT  
 MIAMI, FL 33166  
 Attention: Real Estate Department

Phone: (305) 592-6250  
 Fax: (305) 714-3480

## **Amendment to Lease**

This Amendment made this 7<sup>th</sup> day of November 2002 in Broward County Florida by and between Clear Channel Outdoor, Inc. a Florida corporation, (the "Tenant") with a post office address of

5800 NW 77 Court, Miami, FL 33166

and F. W. Holding 441, Inc., a Florida corporation (the "Landlord") with a post office address of 4951 S.W. 34<sup>th</sup> Place, Davie, FL 33314

Whereas Eller Media and Dixie Southland Corporation a Florida corporation entered into that certain lease No. 59423 dated the 22nd day of February, 2000 (the "Lease") covering certain lands which are a part of the YAF Plat as more correctly described therein; and

Whereas Clear Channel Outdoor, Inc., a Florida corporation is the successor and assignee of all of the rights of Eller Media under the aforementioned lease, and

Whereas F.W. Holding 441, Inc. is the current owner of the land described in the Lease and assignee and successor landlord holding all of the rights of Dixie Southland Corporation under the Lease; and

Whereas the parties have determined that it is in their best interests and to their mutual benefit to amend paragraph 7 of the Lease as set forth below;

Now, therefore, in consideration of the premises and in further consideration of the mutual covenants hereinafter set forth the parties agree as follows:

1. The last sentence of paragraph 7 is hereby deleted.  
The following sentence is inserted in place of the former last sentence of paragraph 7:

"Tenant acknowledges that a building of any height located to the west of the billboard will not cause an obstruction of the structure."

2. In all other respects the Lease is ratified.

In Witness whereof the parties have caused these presents to be executed by their duly appointed officers the day and year first above written.

Signed in our presence:

**Landlord:**

**F.W. Holding 441, Inc.**

Simone Hoag

Barbara Suber

By:

Donald M. Marks  
Donald M. Marks, President

**Tenant:**

**Clear Channel Outdoor, Inc.**

By:

Print name of officer signing

Amendment to Lease

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In witness whereof the parties have caused these presents to be executed by their duly appointed officers the day and year first above written.

Signed in our presence:

**Landlord:**  
**F.W. Holding 441, Inc.**

\_\_\_\_\_

Thayne J. Hall  
Don J. Green

By: \_\_\_\_\_  
Donald M. Marks, President

**Tenant:**  
**Clear Channel Outdoor, Inc.**

By: [Signature]  
Print name of officer signing  
JEFF MURKES  
V.P. OF REGIONAL SALES